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Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: ***Ex Parte Communication***
Intercarrier Roaming, WT Docket No. 05-265

Dear Ms. Dortch:

Sprint Nextel Corporation ("Sprint") underscores the vital role an automatic data roaming obligation plays in advancing the Commission's policy goals of promoting mobile broadband competition, ubiquitous wireless data service for consumers, and broadband network investment and innovation. As discussed in greater detail below, the FCC should require carriers to offer data roaming at just and reasonable rates and not unreasonably discriminatory terms subject to FCC enforcement.

No single service provider has deployed a wireless data network that covers all people in all places across the country. As sophisticated mobile data devices such as smartphones and tablets proliferate, however, consumers not only expect, but demand to receive wireless data service wherever they may travel. Consequently, to satisfy those expectations and provide seamless data service to consumers nationwide, data service providers, large and small, must rely on data roaming to supplement their network coverage. For example, as of April 2010, Sprint's 3G EVDO network covered over 271 million people across the United States (representing approximately 86.8 percent of the total U.S. population, including Puerto Rico), but Sprint's 3G EVDO coverage including roaming covered over 283 million (representing approximately 90.7 percent of the total U.S. population, including Puerto Rico).¹ The increasing availability and use of 4G technology will only serve to accelerate consumer demand and thus the need for affordable data roaming.

¹ To date, Sprint has at least 50 domestic data roaming agreements, the majority of which include 3G EVDO service. Roaming contract terms can range widely from month-to-month or yearly terms with automatic renewal.

Data roaming has been important to the growth of the wireless industry since the early days of wireless service. Providers programmed their devices to operate not only on their own frequencies, but also on other carriers' frequencies to ensure their customers had the technical ability to roam on other carriers' networks. For example, Sprint initially deployed its CDMA network to operate within its 1.9 GHz spectrum, but it quickly added 800 MHz access to its handsets. Although Sprint did not operate in the 800 MHz band, to be competitive, it found it necessary to modify its chipsets to ensure that its customers could roam on a roaming partner's network that used the 800 MHz band. For the same reason, Sprint's EVDO handsets also have been enabled for 800 MHz access since the launch of its EVDO service. These devices were more costly, but necessary to enable customers to roam out-of-footprint.

Data roaming not only helps fill current coverage gaps, but also creates financial incentives that drive additional wireless broadband data network investment and deployment. For example, Sprint continually seeks opportunities to expand its own network coverage given the cost advantages of owner's economics. In assessing whether expanded investment and deployment make financial sense, especially in less populated areas, however, Sprint must evaluate the availability of affordable data roaming in that vicinity. Knowing that consumers demand service they can access not only in the immediate areas in which they live and work, but also in the surrounding areas where they may travel, Sprint is more likely to build additional network facilities in areas where it can supplement its new network with cost-effective data roaming coverage. In areas where there is little or no roaming competition, however, the host carrier has little or no incentive to enter into such a just and reasonable roaming arrangement without an affirmative automatic data roaming obligation.

The same dynamic persists in the context of 4G broadband data network deployment.² Sprint's investment to date in 4G is valued at about \$8.57 billion, which includes a \$1.17 billion cash investment in Clearwire, and the provision of spectrum and other assets to Clearwire valued at \$7.4 billion at the time they were provided. Even as the industry leader in 4G deployment, however, Sprint recognizes that just and reasonable data roaming service is necessary at this critical juncture to help continue to propel this advanced technology forward now and into the future. As the 4G market continues to gain traction, consumers will expect their 4G devices to access 4G mobile data service wherever they may travel. Without an affirmative obligation promoting affordable 4G data roaming, however, the speed and scope the market's 4G wireless broadband deployment will likely be impeded, contrary to the ultimate goals of the National Broadband Plan.

The absence of a just and reasonable data roaming obligation is adversely affecting customers. For example, effective March 1, 2011, Sprint on-network coverage in portions of Montana, North Dakota, and Wyoming will convert to off-network roaming coverage.³ Sprint is

² To date, Sprint has no domestic 4G roaming agreements in place.

³ See http://support.sprint.com/support/article/Learn_more_about_network_changes_coming_to_Montana_North_Dakota_and_Wyoming/case-gz982789-20101207-115335/?ECID=vanity:coveragechange.

reducing its on-network footprint for at least three reasons: (1) the rates charged by the underlying carrier (or carriers) make on-network EVDO service offerings uneconomical in these territories; (2) EVDO roaming service will no longer be available in a portion of these territories; and (3) service quality assurances will no longer be available. An automatic data roaming obligation may have mitigated this outcome.

Sprint reiterates that any data roaming obligation the Commission adopts must include a standard requiring just and reasonable rates and not unreasonably discriminatory terms coupled with a robust FCC mechanism to enforce it. The Commission has stated that its underlying policy goals for data roaming are identical to its policy goals for voice roaming – “to facilitate the provision of services in a manner that provides the greatest benefit to consumers.”⁴ Specifically, the Commission articulated its policy objectives for both voice and data roaming as: (1) investment and innovation in the use of spectrum and the development and deployment of data network facilities and services; (2) competition for mobile broadband business by multiple providers; and (3) consumer benefit from the availability of advanced and innovative mobile services with seamless nationwide coverage.⁵

With respect to voice roaming, the Commission determined that a standard of just and reasonable rates and not unreasonably discriminatory terms effectively furthered its objectives. In fact, just last year the Commission reaffirmed the importance of this standard when it eliminated the in-market exception to the voice roaming rule to ensure it applied nationwide. After careful review, the Commission found that removing the reasonable and not unreasonably discriminatory protections from home roaming “significantly reduced the incentive to make home roaming available, and will lead to the reduction of home roaming arrangements.”⁶ In other words, Commission determined that its roaming policy objectives were not achieved where this standard did not expressly apply. The Commission found that adopting the just, reasonable and not unreasonably discriminatory approach, however, “better preserves incentives to enter and incentives to invest overall, and at the same time protects consumers by facilitating access to ubiquitous service.”⁷

As the voice roaming case aptly demonstrates, an automatic data roaming obligation can be effective in advancing the Commission’s same policy objectives only if it incorporates the same just and reasonable rates and not unreasonably discriminatory terms standard. For example, if a host carrier is required to enter into an automatic data roaming agreement, but is

⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking 25 FCC Rcd 4181 at ¶¶ 50, 60 (2010) (*2010 Roaming Order*).

⁵ *Id.* at ¶ 60.

⁶ *Id.* at ¶ 28.

⁷ *Id.* at ¶ 31.

free to demand unreasonably high rates, the carrier requesting roaming would have no incentive to invoke the agreement, let alone enter into it in the first place. Even if the requesting carrier had no choice but to enter into and invoke such a roaming arrangement, the unreasonably high roaming rates would be passed on to consumers. Accordingly, without such a standard to serve as a backstop for reasonable roaming arrangements, the Commission will fail to realize its policy goals for data roaming.

Furthermore, it is imperative that the Commission give providers the right to invoke FCC enforcement mechanisms if they believe the just and reasonable rates and not unreasonably discriminatory terms standard has not been satisfied. In the case of voice roaming, the Commission recognized the importance of expeditious Commission review of whether such obligations have been met based on the totality of the circumstances of a particular case. Indeed, the Commission even provided additional guidance on the factors it may consider in resolving roaming disputes.⁸ Therefore, Sprint urges the Commission to afford data service providers the right to invoke FCC enforcement mechanisms in the context of data roaming as well. Otherwise, adopting a requirement without teeth will render it ineffective.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let us know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Charles W. McKee

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⁸ *Id.* at ¶¶39-40.